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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 NATHAN WITT, a minor child, by and
11 through his parents, VALERIE L. WITT and
12 DANIEL A. WITT, husband and wife,
13 individually as a marital community, and on
behalf of their minor child,

Plaintiffs,

v.

15 MARION WARE and JOHN DOE WARE,
16 individually and as a marital community, et al.,

Defendants.

Case No. C04-5139FDB

ORDER GRANTING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT DISMISSING
PLAINTIFFS' CLAIMS UNDER 42
U.S.C. §§ 1985, 1986, and 1988

18 The Defendants State of Washington and its agents (Defendants) move for partial summary
19 judgment dismissing Plaintiffs' claims under 42 U.S.C. §§ 1985, 1986 and 1988. Nathan Witt
20 allegedly was abused and medically neglected by his biological parents and was ultimately adopted by
21 the Witts. Plaintiffs bring the previously mentioned claims alleging that the individually named
22 defendant social workers, a mental health counselor, and a foster parent engaged in a conspiracy to
23 deprive Plaintiffs of their civil rights. Plaintiffs claims pursuant to 42 U.S.C. § 1983 have previously
24 been dismissed. [Dkt. # 49] The Parents' claims for loss of the parent/child relationship have been
25 dismissed as well. [Dkt. # 58]

26 ORDER - 1

SUMMARY JUDGMENT STANDARD

Summary judgment is proper if the moving party establishes that there are no genuine issues of material fact and it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). If the moving party shows that there are no genuine issues of material fact, the non-moving party must go beyond the pleadings and designate facts showing an issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986). Inferences drawn from the facts are viewed in favor of the non-moving party. *T.W. Elec. Service v. Pacific Elec. Contractors*, 809 F.2d 626, 630-31 (9th Cir. 1987).

8 Summary judgment is proper if a defendant shows that there is no evidence supporting an
9 element essential to a plaintiff's claim. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Failure of
10 proof as to any essential element of plaintiff's claims means that no genuine issue of material fact can
11 exist and summary judgment is mandated. *Celotex*, 477 U.S. 317, 322-23 (1986). The nonmoving
12 party "must do more than show there is some metaphysical doubt as to the material facts."
13 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

DISCUSSION

15 Conspiracies to deprive persons or classes of persons of the equal protection of the law or of
16 equal privileges and immunities under the law are prohibited by 42 U.S.C. § 1985(3). Plaintiffs must
17 be a member of a class that requires special federal assistance in protecting its civil rights. *McCalden*
18 *v. California Library Ass'n*, 955 F.2d 1214, 1223 (9th Cir. 1990), cert. denied, 504 U.S. 957 (1992).
19 Section 1985 does not create a cause of action for conspiracies to deprive persons of rights
20 guaranteed only by state law and it applies only to discriminatory deprivations of federal rights.
21 *United Brotherhood of Carpenters, Local 610 v. Scott*, 463 U.S. 825 (1983).

22 Plaintiffs have submitted declarations from a former guardian ad litem for Nathan Witt as well
23 as a declaration from Valerie Witt. Plaintiff does not demonstrate how the differing views expressed
24 in these declarations lead to an inference of acts that are “unlikely to have been undertaken without
25 an agreement,” and which could allow a jury to infer the existence of a conspiracy. *See Mendocino*
26 ORDER - 2

1 *Environmental Ctr. v. Mendocino County*, 192 F.3d 1283, 1302 (9th Cir. 1999). Plaintiffs assert that
 2 Nathan has a sensory, mental, or physical disability that renders him part of a protected class
 3 pursuant to RCW 49.60.030.(1), but a plaintiff must be a member of a class that requires special
 4 federal assistance in protecting its civil rights. *McCalden v. California Library Ass'n*, 955 F.2d
 5 1214, 1223 (9th Cir. 1990), *cert. denied*, 504 U.S. 957 (1992). Plaintiffs do not have a cause of
 6 action under Section 1985(3).

7 Neither have Plaintiffs shown that there is a cause of action under 42 U.S.C. § 1985(2); this
 8 section provides a cause of action against a conspiracy to intimidate a witness from testifying in
 9 federal court, and there are no such facts alleged to support such a claim.

10 A cause of action pursuant to 42 U.S.C. § 1986 may be brought against any person who
 11 knows that a conspiracy actionable under either Section 1983 or 1985(3) is about to be committed,
 12 has the power to prevent or aid preventing the conspiratorial wrongs, and fails to or neglects to act.
 13 *Lac du Flambeau Bank of Lake Superior Chippewa Indians v. Stop Treaty Abuse-Wisconsin, Inc.*,
 14 759 F. Supp 1339, 1352 (W.D. Wis. 1991). Thus, a finding of conspiracy under either 42 U.S.C. §
 15 1983 or § 1985 is a necessary prerequisite to a finding of liability under Section 1986. Because
 16 Plaintiffs have failed to demonstrate the prerequisite conspiracy, their claim under Section 1986 fails
 17 as well.

18 Additionally, Defendants would be entitled absolute immunity in performing quasi-
 19 prosecutorial functions connected with the initiation and pursuit of child dependency proceedings.
 20 *See Meyers v. Contra Costa Co. Department of So. Servs*, 812 F.2d 1154, 1157 (9th Cir. 1987). And
 21 *see Doe v. Lebbos*, 348 F.3d 889 (9th Cir. 2003) (applying *Miller v. Gammie*, 335 F.3d 889 (9th Cir.
 22 2003)(A social worker's alleged failure to adequately investigate abuse and neglect reports and to
 23 adequately present complete information to the court were absolutely immune functions.).

24 It naturally follows, that failure to allege facts to support claims under the forgoing statutes
 25 precludes a right to attorney fees under 42 U.S.C. § 1988.

CONCLUSION

2 The foregoing discussion demonstrates that Plaintiffs have failed to come forward with
3 specific facts that show that the individually named defendant social workers, a mental health
4 counselor, and a foster parent engaged in a conspiracy to deprive them of their federal rights.
5 Plaintiffs' claims under 42 U.S.C. §§ 1985, 1986, and 1988 must be dismissed.

6 NOW, THEREFORE, IT IS ORDERED:

2. Plaintiffs' claims under 42 U.S.C. §§ 1985, 1986, and 1988 against the above-named defendants are DISMISSED.

4 DATED this 29th day of July 2005.


FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE

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ORDER - 5